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**From:** Temple, Kurt [Temple.Kurt@epa.gov]  
**Sent:** 4/14/2017 7:17:24 PM  
**To:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** Coleman, Sam [Coleman.Sam@epa.gov]; Kordzi, Stephanie [Kordzi.Stephanie@epa.gov]; Tripathi, Arati [Tripathi.Arati@epa.gov]; Robinson, Jeffrey [Robinson.Jeffrey@epa.gov]; McGhee, Debra [mcghee.debra@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]  
**Subject:** RE: Title VI Beaumont: Revised Draft Informal Resolution Agreement  
**Attachments:** TCEQ DRAFT INFORMAL RESOLUTION AGREEMENT 4.14.17.docx

Hello Ms. Sweeney. Hope you are doing well. Attached you will find a revised draft informal resolution agreement for your review. Pursuant to our previous discussion, we have added some revised language and noted that where appropriate with some highlighting and comment boxes. Also, you will see that we have noted places for the insertion of proposed language from TCEQ. Thank you and we look forward to further conversation.

Have a good weekend.

Kurt T. Temple  
Senior Advisor  
External Civil Rights Compliance Office  
EPA Office of General Counsel  
1200 Pennsylvania Avenue, NW  
Room 2524B  
Washington, D.C. 20460  
202-564-7299

**INFORMAL RESOLUTION AGREEMENT**  
**between the**  
**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
**and the**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**ECRCO Complaint No. 01R-00-R6**

**I. PURPOSE AND JURISDICTION**

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulation at 40 C.F.R. Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Texas Commission on Environmental Quality (TCEQ, formerly the Texas Natural Resource Conservation Commission) is a recipient of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.
- B. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, brought under Title VI and EPA's regulation at 40 C.F.R. Part 7, that alleged discrimination based on race in violation of Title VI. In response to the complaint, EPA began an investigation of TCEQ's compliance with Title VI and EPA regulation. During the course of EPA's investigation, TCEQ agreed to enter into an informal resolution Agreement in order to resolve this complaint.
- C. This Informal Resolution Agreement is entered into by the TCEQ and EPA's External Civil Rights Compliance Office of Civil Rights (ECRCO).
- D. This Informal Resolution Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7, and resolves complaint No. 01R-00-R6 and additional concerns identified by EPA. It is understood that this Informal Resolution Agreement does not constitute an admission by TCEQ of a violation of, or a finding of compliance or noncompliance by EPA with, Title VI and EPA's regulation at 40 C.F.R. Part 7.
- E. TCEQ is committed to carrying out its responsibilities in a nondiscriminatory manner and in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulations at 40 C.F.R. Part 7.

**II. BACKGROUND**

- A. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, that alleged discrimination based on race in violation of Title VI and EPA regulation at 40 C.F.R. Part 7, relating to the 1999 issuance of a modification of a Clean Air Act (CAA) Permit for a hydrocracker unit at the ExxonMobil refinery in Beaumont, Texas.

[ PAGE \\* MERGEFORMAT ]

- B. In response to the complaint described in Section I, Paragraph B, EPA initiated an investigation of TCEQ's compliance with Title VI and EPA regulation at 40 C.F.R. Part 7. The investigation addressed allegations that TCEQ discriminated on the basis of race by allowing ExxonMobil to use inappropriate decreases in its netting calculations for the modification, thereby avoiding a permit hearing, and thus disproportionately denying African Americans the opportunity to participate in the permit process; and issuing a permit modification that resulted in a disparate distribution of the adverse health impacts from the increased air pollution emissions, specifically VOCs, SO<sub>2</sub>, PM<sub>10</sub>, NO<sub>x</sub>, and H<sub>2</sub>S.
- C. TCEQ has responded to all inquiries from EPA regarding the complaint and, in addition to numerous meetings and teleconferences, has provided EPA with:
1. Over 500 pages of supporting documentation in two letters in response to an EPA inquiry in the latter part of 2010;
  2. ExxonMobil's Standard Operating Procedure for Personal H<sub>2</sub>S Monitors and Community Action Panel Guidelines; and
  3. Information on TCEQ's environmental complaints process, data on the type and quantity of historical environmental complaints, and TCEQ response times in the Beaumont area.
- D. EPA acknowledges that since the initial Title VI complaint was filed, a significant reduction in NO<sub>x</sub>, SO<sub>2</sub>, and VOC emissions has occurred at the ExxonMobil Beaumont refinery, based on company reported emission inventories. Some of these emissions reductions are due in part to EPA's National Petroleum Refinery Initiative, which began in 2000, and resulted in a National Settlement (Consent Decree) with ExxonMobil in December 2005. The Consent Decree required the Beaumont refinery to operate a Wet Gas Scrubber and Thermal DeNO<sub>x</sub> system on the Fluidized Catalytic Cracking Unit (FCCU) to control sulfur dioxide, particulates, and nitrogen oxides. The Consent Decree included provisions that reduced nitrogen oxide emissions from selected larger Heaters and Boilers and enhancement to the existing Flare Gas Recovery System to minimize routine flaring. However, EPA remains concerned with emissions of PM and H<sub>2</sub>S.
- E. Based on emissions inventory reports that the ExxonMobil Beaumont refinery submits to TCEQ every year, actual emissions of H<sub>2</sub>S have decreased overall since the initial Title VI complaint was filed in 2000, despite fluctuations in H<sub>2</sub>S emissions from year to year. EPA is concerned about acute emission events that occur at the ExxonMobil Beaumont refinery over concentrated periods of time. Additionally:
1. The ExxonMobil Beaumont refinery has reduced its allowable permitted levels of SO<sub>2</sub> under its transition to a flexible permit, reducing the SO<sub>2</sub> permitted allowable emissions in 1999 from 13,874 tons per year (tpy) to 2163 tpy in 2013. ExxonMobil refinery consolidated six construction permits in the 2010-

**Commented [A1]:** TCEQ to provide wording regarding netting.

2011 timeframe which resulted in an H<sub>2</sub>S permitted allowable emissions cap of 16.31 tpy for 550 emission points.

2. The Beaumont area has achieved attainment of all National Ambient Air Quality Standards (NAAQS), including the one-hour ozone NAAQS, which was replaced in 1997 by the more protective eight-hour ozone standard and the 1997, 2008, and 2015 eight-hour ozone NAAQS; and

3. TCEQ established the Air Pollutant Watch List (APWL) to monitor and address areas in the state where air emissions were persistently monitored at levels above TCEQ regulatory standards and are of potential concern. TCEQ uses the APWL to reduce levels of air emissions of concern by focusing its resources on areas in the state with the greatest need. Beaumont was on TCEQ's APWL for H<sub>2</sub>S from 2002 until 2009 and for SO<sub>2</sub> from 2003 until 2016. Beaumont was removed from the APWL list for both pollutants because **[TCEQ - Please insert appropriate description of criteria satisfied to remove Beaumont from APWL]**

**Commented [A2]:** Additional language/information requested from TCEQ

4. Also, since the filing of the Title VI complaint, EPA has updated the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for the petroleum refinery sector several times requiring maximum achievable control technology for hazardous air pollutants (HAP) emissions, and more recently the petroleum refinery sector risk and technology review updated the NESHAP rules to require continuous monitoring of benzene concentrations at the fence line to ensure that refineries appropriately manage HAP emissions from fugitive emission sources such as leaking equipment and wastewater treatment operations. This requirement applies to the ExxonMobil Beaumont refinery and other refineries in Texas.

**Commented [A3]:** This is new EPA proposed language.

F. Additionally, during the course of the investigation, ECRCO interviewed residents of the Charlton-Pollard neighborhood, which lies immediately to the west of the ExxonMobil Refinery.

1. The residents interviewed complained of frequent nuisance odors from the ExxonMobil refinery. They also complained of health effects, loud noise, flaring, smoke emissions, and black dust fallout on their properties.
2. Each resident interviewed spoke of hardships occasioned by the large amount and speed of traffic on narrow residential streets created by both industrial trucks and employees traveling to and from the refinery, including being unable to back a car out of a driveway and instances when they discovered damage to their private vehicles apparently caused by passing cars.
3. None of the residents could recall ever receiving notice from either TCEQ or the ExxonMobil for community meetings about the refinery or public involvement opportunities related to permitting actions for the refinery. None of the

residents knew about opportunities to engage with a local advisory board established by ExxonMobil.

4. None of the residents were aware of how to report concerns to TCEQ or the refinery.
- G. ECRCO also interviewed a resident of Port Arthur who spends several days per month in Beaumont who was aware that TCEQ maintained a hotline to report air quality problems, and who stated that he had attempted to file complaints about the Beaumont air quality but that he was unable to do so because he lacked a Beaumont residential address.
- H. As is ECRCO's current practice, during the course of this investigation ECRCO reviewed TCEQ's policies and procedures regarding its foundational nondiscrimination program, including the procedural safeguards required by EPA's non-discrimination regulation, public participation policies and procedures, as well required policies and procedures to ensure meaningful access to TCEQ programs and activities for persons with disabilities and limited-English proficiency. TCEQ has already taken steps to comply with these requirements and ECRCO and TCEQ will continue to work together to strengthen and appropriately implement these policies and practices. The details of this work will be addressed under a separate document.

Commented [A4]: This is new EPA-Proposed language.

### III. SPECIFIC TCEQ COMMITMENTS

- A. Within 60 days of the effective date of this Agreement, TCEQ shall submit to the EPA for approval a plan for a series of community meetings. The Community Meeting Plan will include the following elements:
  1. Projected dates and times for at least four community meetings directed at residents of Beaumont Texas, particularly those residing in the Charlton-Pollard neighborhood. The first of these meeting should begin no later than 120 days from the effective date of this Agreement, with the final meeting taking place no later than 2 years from the effective date of this Agreement.
  2. A strategy for dissemination of information about community meetings to residents of the Charlton-Pollard neighborhood, which will include but not be limited to the mailing of flyers announcing the meetings to, at a minimum, all residents of the Charlton-Pollard neighborhood and posting the time, date, location and purpose of upcoming meetings on the TCEQ website.
  3. A plan and appropriate assessment to determine what language services TCEQ may need to provide to ensure that LEP individuals can meaningfully participate in the community meetings as described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and [ HYPERLINK "http://www.lep.gov" ] and consistent with the LEP guidance and materials for EPA recipients at [

[ PAGE \\* MERGEFORMAT ]

HYPERLINK "https://www.epa.gov/ocr/assisting-people-limited-english-proficiency" ].

4. Consistent with Section III Paragraph A(3) above, a plan to provide information in languages other than English as identified by TCEQ's language access assessment for the City of Beaumont, including the Charlton-Pollard neighborhood in particular.
  5. Certification that all locations selected for meetings are accessible to persons with mobility impairments and that individuals who require a reasonable accommodation due to disability will be accommodated to participate in such meetings.
  6. Proposed agendas and speakers for each of the planned community meetings, which will include the following topics in any order:
    - a. Expansion plans for the Beaumont Exxon/Mobil Refinery.
    - b. Results of air quality monitoring—how to access and interpret data.
    - c. TCEQ's environmental complaints process for members of the public, including how to contact TCEQ; what information must be provided; how the agency responds to complaints; and how to follow the status of a complaint after it is made.
    - d. How members of the public can collect and provide useful information to TCEQ, and
    - e. How evidence collected by members of the public is used by TCEQ in enforcement.
- B. At TCEQ's discretion, the agency may hold more than four meetings to cover the above-referenced topics.
- C. **TCEQ to provide additional language here.**

**Commented [A5]:** This is new, EPA proposed language.

**Commented [A6]:** TCEQ to provide language describing Firehouse monitor and when it will be installed, and data availability.

#### IV. GENERAL

- A. In consideration of TCEQ's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 01R-00-R6 and not issue a decision containing findings on the merits of the complaint.
- B. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in complaint 01R-00-R6 and closure of the complaint as of the date of that letter.
- C. EPA will, upon request, provide technical assistance to TCEQ regarding any of the civil rights nondiscrimination obligations previously referenced.

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- D. TCEQ will report the completion of each commitment identified under Section III consistent with the timeframes in Section III by certified mail to the Director, External Civil Rights Compliance Office, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by TCEQ of each commitment.
- E. Within 30 days of receipt, EPA will review and provide feedback about any documentation submitted by TCEQ demonstrating completion of each commitment and will provide an assessment as to whether the documentation satisfies the commitment.

#### V. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Electronic documents submitted by TCEQ to EPA via email shall be sent to the following email address: [ HYPERLINK "mailto:ocr@epa.gov" ]. Documents submitted by TCEQ to EPA shall be sent to the Director, External Civil Rights Compliance Office, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to TCEQ shall be sent to the Office of Chief Clerk, Texas Commission on Environmental Quality, Mail Code 105, P.O. Box 13087, Austin, TX 78711-3087.

#### VI. EFFECT OF THE AGREEMENT

- A. TCEQ understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. EPA may request verification of such data and information as necessary.
- B. TCEQ understands that EPA will not close its monitoring of this Agreement until EPA determines that TCEQ has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-opening an investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change

Commented [A7]: This is EPA proposed new text.

to TCEQ's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Director of TCEQ and the Director of ECRCO.

- D. This Agreement constitutes the entire Agreement between TCEQ and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by TCEQ and EPA in accordance with the provisions of Section VI. Paragraph C above.
- E. This Agreement does not affect TCEQ's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 CFR Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Executive Director, in his capacity as an official of TCEQ, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Texas Commission on Environmental Quality,

\_\_\_\_\_  
Richard Hyde, Executive Director (Date)

On behalf of the U.S. Environmental Protection Agency,

\_\_\_\_\_  
Lilian S. Dorka, Director (Date)  
External Civil Rights Compliance Office



Message

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**From:** Dorka, Lilian [Dorka.Lilian@epa.gov]  
**Sent:** 4/4/2017 1:49:36 PM  
**To:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**CC:** Temple, Kurt [Temple.Kurt@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Margaret Ligarde [margaret.ligarde@tceq.texas.gov]; Amy Prescott [Amy.Prescott@Tceq.Texas.Gov]; Amy Browning [amy.browning@tceq.texas.gov]; Bridget C. Bohac [Bridget.C.Bohac@tceq.texas.gov]; McGhee, Debra [mcghee.debra@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]  
**Subject:** RE: Title VI - Beaumont

Thanks Caroline for this and thanks for the call on Friday. I agree that it was very productive and I look forward to continuing our work and resolving this case. I think this below about covers it. We expect to have our parts to you by the end of this week. I will let you know if that changes. Thanks again!

Lilian Sotolongo Dorka  
Director, External Civil Rights Compliance Office  
EPA, Office of General Counsel  
202-564-9649  
WJC-N Room 2450

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**From:** Caroline Sweeney [mailto:caroline.sweeney@tceq.texas.gov]  
**Sent:** Monday, April 03, 2017 5:43 PM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Seager, Cheryl <Seager.Cheryl@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>  
**Cc:** Temple, Kurt <Temple.Kurt@epa.gov>; Coleman, Sam <Coleman.Sam@epa.gov>; Margaret Ligarde <margaret.ligarde@tceq.texas.gov>; Amy Prescott <Amy.Prescott@Tceq.Texas.Gov>; Amy Browning <amy.browning@tceq.texas.gov>; Bridget C. Bohac <Bridget.C.Bohac@tceq.texas.gov>; McGhee, Debra <mcghee.debra@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>  
**Subject:** RE: Title VI - Beaumont

Hi there,

Thanks for the productive conversation on Friday. As promised, the following is what I have as the to-dos moving forward. Please let me know if y'all have anything different. The references to pages/paragraphs are from the version y'all sent back to us on March 29<sup>th</sup>.

Page 2, Paragraph D – TCEQ will propose language, especially stressing making info more accessible to the public.  
Page 3, end of Paragraph E – EPA will propose language, possibly using specific data.  
Page 4, Paragraph I – EPA will propose language if needed to better reflect complainants' requests in this regard.  
Page 4, Paragraph A - EPA will propose language on meeting(s) etc.  
Page 4 – TCEQ will propose language on adding H2S monitor with background info; likely for the background section instead. Also, will check on data availability (i.e, "real time").  
Page 5, Deleted Paragraph C – EPA will propose language if needed.  
Page 6, Procedural Safeguards – EPA will draft language to go in background section. TCEQ to check New Mexico's website.  
Page 7, end of Paragraph A – EPA will get back to TCEQ about deleted language.

Thanks-Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087

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**From:** Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

**Sent:** Wednesday, March 29, 2017 3:30 PM

**To:** Caroline Sweeney <[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)>

**Cc:** Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>; Margaret Ligarde <[margaret.ligarde@tceq.texas.gov](mailto:margaret.ligarde@tceq.texas.gov)>; Amy Prescott <[Amy.Prescott@Tceq.Texas.Gov](mailto:Amy.Prescott@Tceq.Texas.Gov)>; Amy Browning <[amy.browning@tceq.texas.gov](mailto:amy.browning@tceq.texas.gov)>; Bridget C. Bohac <[Bridget.C.Bohac@tceq.texas.gov](mailto:Bridget.C.Bohac@tceq.texas.gov)>; Ramiro Garcia <[ramiro.garcia@tceq.texas.gov](mailto:ramiro.garcia@tceq.texas.gov)>; Jackie Heinemann <[Jackie.Heinemann@Tceq.Texas.Gov](mailto:Jackie.Heinemann@Tceq.Texas.Gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>; O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>

**Subject:** RE: Title VI - Beaumont

Hello Caroline, hope you are well. In anticipation of our call on Friday, attached please find a copy of the redlined version of the draft Informal Resolution Agreement that you sent to us – with our annotations indicating where we are fine with your edits or we need further discussion. Looking forward to our call on Friday. Thanks! Lilian

Lilian Sotolongo Dorka  
Director, External Civil Rights Compliance Office  
EPA, Office of General Counsel  
202-564-9649  
WJC-N Room 2450

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**From:** Caroline Sweeney [<mailto:caroline.sweeney@tceq.texas.gov>]

**Sent:** Thursday, March 16, 2017 10:24 PM

**To:** O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>

**Cc:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>; Margaret Ligarde <[margaret.ligarde@tceq.texas.gov](mailto:margaret.ligarde@tceq.texas.gov)>; Amy Prescott <[Amy.Prescott@Tceq.Texas.Gov](mailto:Amy.Prescott@Tceq.Texas.Gov)>; Amy Browning <[amy.browning@tceq.texas.gov](mailto:amy.browning@tceq.texas.gov)>; Bridget C. Bohac <[Bridget.C.Bohac@tceq.texas.gov](mailto:Bridget.C.Bohac@tceq.texas.gov)>; Ramiro Garcia <[ramiro.garcia@tceq.texas.gov](mailto:ramiro.garcia@tceq.texas.gov)>; Jackie Heinemann <[Jackie.Heinemann@Tceq.Texas.Gov](mailto:Jackie.Heinemann@Tceq.Texas.Gov)>

**Subject:** Re: Title VI - Beaumont

Thanks Mary - I had actually sent some possible meeting times to Cheryl earlier today before your voicemail but they were for the week of the 20th rather than the 27th. Let us coordinate internally tomorrow and I'll send some possible times for the week of the 27th.

Additionally, below please find a link to our revised Environmental Equity web page. We're also working on a direct link to the revised page from our main TCEQ web page.

<https://www.tceq.texas.gov/agency/hearings/envequ.html>

We look forward to receiving your comments on the draft agreement.

Thanks - Caroline

On Mar 16, 2017, at 4:56 PM, O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)> wrote:

Caroline-

I am following up on the voicemail I left you earlier today. We would like to schedule a call with you early the week of March 27th to discuss the draft informal resolution agreement, the changes to your website related to your non-discrimination program that you thought would be live by the end of this week, & other issues related to the Beaumont community.

Next week in preparation for that call, we plan to send an annotated version of the draft agreement that you sent highlighting areas where we would like to have more discussion.

I am out of the office tomorrow and Monday, but you can respond to this email & Kurt Temple will follow up with you to get the call set up. Thanks, Mary

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Ave., NW

Washington, DC 20460

(202) 564-4992

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**From:** Caroline Sweeney <[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)>

**Sent:** Friday, March 3, 2017 5:16 PM

**To:** Dorka, Lilian; O'Lone, Mary; Seager, Cheryl

**Cc:** Margaret Ligarde; Amy Prescott; Amy Browning; Bridget C. Bohac; Ramiro Garcia

**Subject:** RE: Title VI - Beaumont

Good afternoon,

Attached please find our proposed language for the informal resolution agreement on this matter. Additionally, I've included some clarifications/additional items below:

- 1) We would still like to meet personally with the complainants. Even if this doesn't resolve the matter, it is a chance for us to try to build relationships in the community.
- 2) As to our current non-discrimination program, we would prefer to handle that separately from this distinct complaint. In response to your comments on our website, we have made what we think are very positive changes and hope to go live with those in the next two weeks. We'll share links with you when that happens.
- 3) While this is very preliminary, we are currently looking at what it would take to add H2S monitoring to our monitor location near the ExxonMobil facility in Beaumont. The air monitor

we refer to as Beaumont Mary has to be relocated because of site lease issues, though we have already entered into a new site lease. There's two obvious challenges we see to adding H2S monitoring: 1) funding during what are difficult budget times for us; and 2) if H2S monitoring is included, the needed pad size would have to increase from 20 x 20 to 40 x 40 and if this were possible, the new site lease would need to be renegotiated based on that change. We ask that you not share this information since it is so very preliminary.

We look forward to further discussions to resolve this issue. Hope y'all have a good weekend!

Regards,  
Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087  
Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

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**From:** Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]  
**Sent:** Monday, February 06, 2017 8:34 PM  
**To:** Caroline Sweeney <[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)>  
**Cc:** O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Margaret Ligarde <[margaret.ligarde@tceq.texas.gov](mailto:margaret.ligarde@tceq.texas.gov)>; Amy Prescott <[Amy.Prescott@Tceq.Texas.Gov](mailto:Amy.Prescott@Tceq.Texas.Gov)>; Amy Browning <[amy.browning@tceq.texas.gov](mailto:amy.browning@tceq.texas.gov)>; Bridget C. Bohac <[Bridget.C.Bohac@tceq.texas.gov](mailto:Bridget.C.Bohac@tceq.texas.gov)>; Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>  
**Subject:** Re: Title VI - Beaumont

Thanks very much Caroline! Really appreciate the attachments and look forward to getting your response to the draft agreement by the 22nd.

We were wondering if you could also share the summary of the last five years of complaints that Sarah discussed? Thanks again!

Sent from my iPhone

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Regards,

Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087  
Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

<ComplaintManual.pdf>

<Odor Investigation Protocol.pdf>

Message

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**From:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**Sent:** 4/3/2017 9:43:26 PM  
**To:** Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]  
**CC:** Temple, Kurt [Temple.Kurt@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Margaret Ligarde [margaret.ligarde@tceq.texas.gov]; Amy Prescott [Amy.Prescott@Tceq.Texas.Gov]; Amy Browning [amy.browning@tceq.texas.gov]; Bridget C. Bohac [Bridget.C.Bohac@tceq.texas.gov]; McGhee, Debra [mcghee.debra@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]  
**Subject:** RE: Title VI - Beaumont

Hi there,

Thanks for the productive conversation on Friday. As promised, the following is what I have as the to-dos moving forward. Please let me know if y'all have anything different. The references to pages/paragraphs are from the version y'all sent back to us on March 29<sup>th</sup>.

Page 2, Paragraph D – TCEQ will propose language, especially stressing making info more accessible to the public.  
Page 3, end of Paragraph E – EPA will propose language, possibly using specific data.  
Page 4, Paragraph I – EPA will propose language if needed to better reflect complainants' requests in this regard.  
Page 4, Paragraph A - EPA will propose language on meeting(s) etc.  
Page 4 – TCEQ will propose language on adding H2S monitor with background info; likely for the background section instead. Also, will check on data availability (i.e, "real time").  
Page 5, Deleted Paragraph C – EPA will propose language if needed.  
Page 6, Procedural Safeguards – EPA will draft language to go in background section. TCEQ to check New Mexico's website.  
Page 7, end of Paragraph A – EPA will get back to TCEQ about deleted language.

Thanks-Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087  
Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

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**From:** Dorka, Lilian [mailto:Dorka.Lilian@epa.gov]  
**Sent:** Wednesday, March 29, 2017 3:30 PM  
**To:** Caroline Sweeney <caroline.sweeney@tceq.texas.gov>  
**Cc:** Seager, Cheryl <Seager.Cheryl@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Coleman, Sam <Coleman.Sam@epa.gov>; Margaret Ligarde <margaret.ligarde@tceq.texas.gov>; Amy Prescott <Amy.Prescott@Tceq.Texas.Gov>; Amy Browning <amy.browning@tceq.texas.gov>; Bridget C. Bohac <Bridget.C.Bohac@tceq.texas.gov>; Ramiro Garcia <ramiro.garcia@tceq.texas.gov>; Jackie Heinemann <Jackie.Heinemann@Tceq.Texas.Gov>; McGhee, Debra <mcghee.debra@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>  
**Subject:** RE: Title VI - Beaumont

Hello Caroline, hope you are well. In anticipation of our call on Friday, attached please find a copy of the redlined version of the draft Informal Resolution Agreement that you sent to us – with our annotations indicating where we are fine with your edits or we need further discussion. Looking forward to our call on Friday. Thanks! Lilian

Lilian Sotolongo Dorka  
Director, External Civil Rights Compliance Office  
EPA, Office of General Counsel

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**From:** Caroline Sweeney [<mailto:caroline.sweeney@tceq.texas.gov>]  
**Sent:** Thursday, March 16, 2017 10:24 PM  
**To:** O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>  
**Cc:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>; Margaret Ligarde <[margaret.ligarde@tceq.texas.gov](mailto:margaret.ligarde@tceq.texas.gov)>; Amy Prescott <[Amy.Prescott@Tceq.Texas.Gov](mailto:Amy.Prescott@Tceq.Texas.Gov)>; Amy Browning <[amy.browning@tceq.texas.gov](mailto:amy.browning@tceq.texas.gov)>; Bridget C. Bohac <[Bridget.C.Bohac@tceq.texas.gov](mailto:Bridget.C.Bohac@tceq.texas.gov)>; Ramiro Garcia <[ramiro.garcia@tceq.texas.gov](mailto:ramiro.garcia@tceq.texas.gov)>; Jackie Heinemann <[Jackie.Heinemann@Tceq.Texas.Gov](mailto:Jackie.Heinemann@Tceq.Texas.Gov)>  
**Subject:** Re: Title VI - Beaumont

Thanks Mary - I had actually sent some possible meeting times to Cheryl earlier today before your voicemail but they were for the week of the 20th rather than the 27th. Let us coordinate internally tomorrow and I'll send some possible times for the week of the 27th.

Additionally, below please find a link to our revised Environmental Equity web page. We're also working on a direct link to the revised page from our main TCEQ web page.

<https://www.tceq.texas.gov/agency/hearings/envequ.html>

We look forward to receiving your comments on the draft agreement.

Thanks - Caroline

On Mar 16, 2017, at 4:56 PM, O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)> wrote:

Caroline-

I am following up on the voicemail I left you earlier today. We would like to schedule a call with you early the week of March 27th to discuss the draft informal resolution agreement, the changes to your website related to your non-discrimination program that you thought would be live by the end of this week, & other issues related to the Beaumont community.

Next week in preparation for that call, we plan to send an annotated version of the draft agreement that you sent highlighting areas where we would like to have more discussion.

I am out of the office tomorrow and Monday, but you can respond to this email & Kurt Temple will follow up with you to get the call set up. Thanks, Mary

Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Ave., NW

Washington, DC 20460

(202) 564-4992

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**From:** Caroline Sweeney <[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)>

**Sent:** Friday, March 3, 2017 5:16 PM

**To:** Dorka, Lilian; O'Lone, Mary; Seager, Cheryl

**Cc:** Margaret Ligarde; Amy Prescott; Amy Browning; Bridget C. Bohac; Ramiro Garcia

**Subject:** RE: Title VI - Beaumont

Good afternoon,

Attached please find our proposed language for the informal resolution agreement on this matter. Additionally, I've included some clarifications/additional items below:

- 1) We would still like to meet personally with the complainants. Even if this doesn't resolve the matter, it is a chance for us to try to build relationships in the community.
- 2) As to our current non-discrimination program, we would prefer to handle that separately from this distinct complaint. In response to your comments on our website, we have made what we think are very positive changes and hope to go live with those in the next two weeks. We'll share links with you when that happens.
- 3) While this is very preliminary, we are currently looking at what it would take to add H2S monitoring to our monitor location near the ExxonMobil facility in Beaumont. The air monitor we refer to as Beaumont Mary has to be relocated because of site lease issues, though we have already entered into a new site lease. There's two obvious challenges we see to adding H2S monitoring: 1) funding during what are difficult budget times for us; and 2) if H2S monitoring is included, the needed pad size would have to increase from 20 x 20 to 40 x 40 and if this were possible, the new site lease would need to be renegotiated based on that change. We ask that you not share this information since it is so very preliminary.

We look forward to further discussions to resolve this issue. Hope y'all have a good weekend!

Regards,  
Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087  
Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

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**From:** Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

**Sent:** Monday, February 06, 2017 8:34 PM

**To:** Caroline Sweeney <[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)>

**Cc:** O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Margaret Ligarde <[margaret.ligarde@tceq.texas.gov](mailto:margaret.ligarde@tceq.texas.gov)>; Amy Prescott <[Amy.Prescott@Tceq.Texas.Gov](mailto:Amy.Prescott@Tceq.Texas.Gov)>; Amy Browning



<[amy.browning@tceq.texas.gov](mailto:amy.browning@tceq.texas.gov)>; Bridget C. Bohac <[Bridget.C.Bohac@tceq.texas.gov](mailto:Bridget.C.Bohac@tceq.texas.gov)>; Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

**Subject:** Re: Title VI - Beaumont

Thanks very much Caroline! Really appreciate the attachments and look forward to getting your response to the draft agreement by the 22nd.

We were wondering if you could also share the summary of the last five years of complaints that Sarah discussed? Thanks again!

Sent from my iPhone

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Good afternoon,

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Regards,

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<ComplaintManual.pdf>

<Odor Investigation Protocol.pdf>

Message

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**From:** Dorka, Lilian [Dorka.Lilian@epa.gov]  
**Sent:** 3/3/2017 10:30:14 PM  
**To:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** Margaret Ligarde [margaret.ligarde@tceq.texas.gov]; Amy Prescott [Amy.Prescott@Tceq.Texas.Gov]; Amy Browning [amy.browning@tceq.texas.gov]; Bridget C. Bohac [Bridget.C.Bohac@tceq.texas.gov]; Ramiro Garcia [ramiro.garcia@tceq.texas.gov]; O'Lone, Mary [OLone.Mary@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]; McGhee, Debra [mcghee.debra@epa.gov]  
**Subject:** RE: Title VI - Beaumont  
**Attachments:** Draft Informal Resolution Agreement Beaumont\_2.22.17.docx

Thank you Caroline. We will review this ASAP. We will look to schedule a conversation with you next week. Lilian

Lilian Sotolongo Dorka  
Director, External Civil Rights Compliance Office  
EPA, Office of General Counsel  
202-564-9649  
WJC-N Room 2450

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**From:** Caroline Sweeney [mailto:caroline.sweeney@tceq.texas.gov]  
**Sent:** Friday, March 03, 2017 5:17 PM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Seager, Cheryl <Seager.Cheryl@epa.gov>  
**Cc:** Margaret Ligarde <margaret.ligarde@tceq.texas.gov>; Amy Prescott <Amy.Prescott@Tceq.Texas.Gov>; Amy Browning <amy.browning@tceq.texas.gov>; Bridget C. Bohac <Bridget.C.Bohac@tceq.texas.gov>; Ramiro Garcia <ramiro.garcia@tceq.texas.gov>  
**Subject:** RE: Title VI - Beaumont

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Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services

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**Sent:** Monday, February 06, 2017 8:34 PM

**To:** Caroline Sweeney <[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)>

**Cc:** O'Lone, Mary <[OLone.Mary@epa.gov](mailto:OLone.Mary@epa.gov)>; Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>; Temple, Kurt <[Temple.Kurt@epa.gov](mailto:Temple.Kurt@epa.gov)>; Keeler, Katsumi <[Keeler.Katsumi@epa.gov](mailto:Keeler.Katsumi@epa.gov)>; Margaret Ligarde <[margaret.ligarde@tceq.texas.gov](mailto:margaret.ligarde@tceq.texas.gov)>; Amy Prescott <[Amy.Prescott@Tceq.Texas.Gov](mailto:Amy.Prescott@Tceq.Texas.Gov)>; Amy Browning <[amy.browning@tceq.texas.gov](mailto:amy.browning@tceq.texas.gov)>; Bridget C. Bohac <[Bridget.C.Bohac@tceq.texas.gov](mailto:Bridget.C.Bohac@tceq.texas.gov)>; Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>; McGhee, Debra <[mcghee.debra@epa.gov](mailto:mcghee.debra@epa.gov)>

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Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

<ComplaintManual.pdf>

<Odor Investigation Protocol.pdf>

**INFORMAL RESOLUTION AGREEMENT**  
**between the**  
**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
**and the**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**OCR Complaint No. 01R-00-R6**

**I. PURPOSE AND JURISDICTION**

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulations at 40 C.F.R. Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Texas Commission on Environmental Quality (TCEQ, formerly the Texas Natural Resource Conservation Commission) is a recipient of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.
- B. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, brought under Title VI and EPA's regulations at 40 C.F.R. Part 7, that alleged discrimination based on race in violation of Title VI. In response to the complaint, EPA began an investigation of TCEQ's compliance with Title VI and EPA regulations. During the course of EPA's investigation, TCEQ agreed to enter into an informal resolution agreement in order to resolve this complaint.
- C. This Informal Resolution Agreement is entered into by the Texas Commission on Environmental Quality and the EPA's Office of Civil Rights (OCR).
- D. This Informal Resolution Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulations found at 40 C.F.R. Part 7, resolves complaint No. 01R-00-R6 and additional concerns identified by EPA. It is understood that this Informal Resolution Agreement does not constitute an admission by TCEQ of a violation of, or a finding of compliance or noncompliance by EPA with, 40 C.F.R. Part 7.
- ~~E. TCEQ is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulations at 40 C.F.R. Part 7. The activities detailed in Section III of this Agreement, which TCEQ has voluntarily agreed to undertake and implement, are in furtherance of this commitment.~~

**II. BACKGROUND**

- A. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, that alleged discrimination based on race in violation of Title VI and EPA regulations at 40 C.F.R.

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Numbering Style: A, B, C, ... + Start at: 1 + Alignment:  
Left + Aligned at: 0.56" + Indent at: 0.81"

Part 7 relating to the 1999 issuance of a modification of a Clean Air Act (CAA) Permit for a hydrocracker unit at the ExxonMobil refinery in Beaumont, Texas.

B. In response to the complaint described in Section I, Paragraph B, EPA initiated an investigation of TCEQ's compliance with Title VI and EPA regulations at 40 C.F.R. Part 7. The investigation addressed allegations that TCEQ discriminated on the basis of race by allowing ExxonMobil to use inappropriate decreases in its netting calculations for the modification, thereby avoiding a permit hearing, and thus disproportionately denying African Americans the opportunity to participate in the permit process; and issuing a permit modification that resulted in a disparate distribution of the adverse health impacts from the increased air pollution emissions, specifically VOCs, SO<sub>2</sub>, PM<sub>10</sub>, NO<sub>x</sub>, and H<sub>2</sub>S.

C. TCEQ has timely responded to all inquiries from EPA regarding the complaint and, in addition to numerous meetings and teleconferences, has provided EPA with:

1. over 500 pages of supporting documentation in two letters in response to an EPA inquiry in the latter part of 2010;
2. ExxonMobil's Standard Operating Procedure for Personal H<sub>2</sub>S Monitors and Community Action Panel Guidelines; and
3. Information on TCEQ's environmental complaints process, data on the type and quantity of historical environmental complaints, and TCEQ response times in the Beaumont area.

B-

D. EPA acknowledges that since the initiation of this investigation, TCEQ has made changes to public notice requirements which have increased the opportunity for public engagement in the permitting process. Additionally, TCEQ currently requires permit application information and supporting data for netting calculations that was not required in permit applications at the time of the Exxon Mobil Beaumont modification. TCEQ now requires the relevant information necessary to determine whether the appropriate netting exercises were conducted. TCEQ has revised and clarified definitions relating to netting and New Source Review requirements since 2000 to ensure that both industry and the public know what is required during the permitting process. Information is carefully reviewed by TCEQ to ensure that all relevant state and federal requirements are met, including those relating to netting.

E. EPA acknowledges since the initial Title VI complaint was filed, a significant reduction in NO<sub>x</sub>, SO<sub>2</sub>, and VOC emissions has occurred at the facility, based on company reported emission inventories. ~~T~~Some of these emissions reductions are due in large part to EPA's National Petroleum Refinery Initiative which began in 2000 and resulted in a National Settlement (Consent Decree) with ExxonMobil in December 2005. The Consent Decree required the Beaumont refinery to operate a Wet Gas Scrubber and Thermal DeNO<sub>x</sub> system on the Fluidized Catalytic Cracking Unit (FCCU) to control sulfur dioxide, particulates, and nitrogen oxides. The Consent Decree included provisions that reduced nitrogen oxide emissions from selected larger Heaters and Boilers and enhancement to the existing Flare Gas

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Recovery System to minimize routine flaring. However, EPA remains concerned with emissions of PM and H<sub>2</sub>S, which have fluctuated significantly from year-to-year and, in the case of H<sub>2</sub>S, is an ongoing concern in the community. Additionally, since the filing of the Title VI complaint:

1. Actual emissions of H<sub>2</sub>S have gone down based on emissions inventory reports that the refinery submits to TCEQ every year. Additionally, the ExxonMobil refinery has reduced its allowable permitted levels of H<sub>2</sub>S and SO<sub>2</sub> under its flexible permit, reducing the SO<sub>2</sub> cap from 2600 tons to 600 tons and the H<sub>2</sub>S cap from 39 tons to 11 tons;
2. The Beaumont area has achieved attainment of all National Ambient Air Quality Standards (NAAQS), including the one-hour ozone NAAQS, and the 1997, 2008, and 2015 ozone NAAQS; and
3. Beaumont was on the Air Pollutant Watch List for H<sub>2</sub>S from 2002 until 2009 and for SO<sub>2</sub> from 2003 until 2016. TCEQ established the Air Pollutant Watch List (APWL) to address areas in the state where air toxics were persistently monitored at levels of potential concern. The TCEQ uses the APWL to reduce levels of air toxics by focusing its resources on areas in the state with the greatest need. Beaumont was removed from the watch list for both constituents because there was not an exceedence of the state standard for a significant period of time.

D.

E.F. Also, since the filing of the Title VI complaint, EPA has updated the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for the petroleum refinery sector several times requiring maximum achievable control technology for hazardous air pollutants (HAP) emissions, and more recently the petroleum refinery sector risk and technology review updated the NESHAP rules to require continuous monitoring of benzene concentrations at the fence line to ensure that refineries appropriately manage HAP emissions from fugitive emission sources such as leaking equipment and wastewater treatment operations. This requirement applies to the ExxonMobil Beaumont refinery and other refineries in Texas.

F.G. Further, since the time of the Title VI complaint, the refinery has also received a Plantwide Applicability Limit (PAL) permit for NO<sub>x</sub> and VOCs based on its historical baseline actual emissions which were lower than their permitted historical allowable emissions.

H. During the course of the investigation, OCR reviewed the requirements of 40 C.F.R. Part 7, Subpart D that are foundational elements of a recipient's non-discrimination program. These include: the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g); adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and, continuing notice of non-discrimination under 40 C.F.R. § 7.95. OCR also reviewed TCEQ's public participation process and whether TCEQ ensures that the public participation process is accessible to limited-English proficient persons and persons with disabilities. Finally, OCR reviewed whether, in general, TCEQ has in place

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procedures, policies, and/or guidance to ensure that it provides meaningful access to limited English proficient persons and persons with disabilities in all its programs, services and activities that receive federal financial assistance from EPA.

G-I. Additionally, during the course of the investigation, complainants have requested additional information on TCEQ's enforcement process as well as the community's involvement in that process.

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### III. SPECIFIC TCEQ COMMITMENTS

A. TCEQ shall ensure that:

A. 1. Within 180 days after the effective date of this Agreement:

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- a. TCEQ shall hold a community meeting in the Beaumont area in which the agency explains and takes questions on:
  1. the TCEQ enforcement process, including how to make an environmental complaint, how the agency responds to complaints, and how to follow the status of a complaint once it is made; and
  2. the TCEQ's use of citizen-collected evidence in its enforcement process and how a citizen may participate in that process.

b. At TCEQ's discretion, the agency may hold more than one meeting to cover the above-referenced topics.

A fence line monitoring system is in operation at the ExxonMobil Beaumont Complex to accurately and continuously monitor and record, at minimum, concentrations of hydrogen sulfide and particulate matter (for the reasons identified in II.D) at the Complex limits in a manner approved by EPA.

b. A meteorological system is in operation at the ExxonMobil Beaumont Complex to accurately and continuously detect and record, at a minimum, the wind speed and direction.

2. The real-time and historical data resulting from III(A)(1)(a) and III(A)(1)(b) of this Agreement is made readily available to the general public and also readily accessible to individuals with limited English proficiency and individuals with disabilities.

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3. The real-time and historical data resulting from III(A)(1)(a) and III(A)(1)(b) of this Agreement is made readily available to the ExxonMobil facility staff, with adequate auditory and visual alarms.

4. TCEQ audits and validates the data in section III(A)(1) of this Agreement.

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B. Within 180 days after the effective date of this Agreement, TCEQ shall submit to EPA, for EPA's review and approval, a report of TCEQ's current programs and activities, and plans for future programs and activities, to monitor and abate the effects of air toxics emissions regulated by TCEQ, including hydrogen sulfide, in

communities adjacent to the ExxonMobil Beaumont refinery and, for consistency, all other petroleum refineries in TCEQ's jurisdiction.

C. TCEQ shall verify compliance of the ExxonMobil Beaumont Complex with all requirements of the new residual risk rules resulting from EPA's Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards (Refinery Sector Rule) within 180 days of the due date for implementation of each requirement. Within 180 days of the verification of the implementation of each requirement, TCEQ shall notify EPA of its completion.

D.B. TCEQ shall post the reports described in Sections III(A), III(B), and III(C) of this Agreement on its website in such a manner that it is readily accessible to the general public and also accessible to individuals with limited English proficiency and individuals with disabilities.

#### *Non-Discrimination Procedural Safeguards*

(Please see attached "checklist" that EPA would like to discuss with TCEQ to determine the current status of TCEQ's non-discrimination program so that the informal resolution agreement will accurately reflect elements TCEQ has already adopted and those TCEQ commits to implement.)

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E. *Notice of Non-Discrimination under the Federal Non-Discrimination Statutes*

F. *Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes*

G. *Designation of a Non-Discrimination Coordinator*

H. *Public Participation*

I. *Access for Persons with Limited English Proficiency*

J. *Access for Persons with Disabilities*

K. *Training*

1. Within 90 days after implementing the deliverables identified in this Agreement related to non-discrimination procedural safeguards, public participation and equal access, TCEQ will ensure that all appropriate staff has been trained on these processes and procedures as well as on the nature of the federal non-discrimination obligations.

2. Within 90 days after execution of this Agreement, TCEQ shall have a plan in place to ensure that the training in Section III, Paragraph K. 1. above is a routine part of the on-boarding process for new employees and is given routinely as refresher training to all employees.



#### IV. GENERAL

- A. In consideration of TCEQ's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 01R-00-R6 and not issue a decision containing findings on the merits of the complaint.
- B. EPA will, upon request, provide technical assistance to TCEQ regarding any of the civil rights nondiscrimination obligations previously referenced.
- C. TCEQ will report the completion of each commitment identified under Section III consistent with the timeframes in Section III by certified mail to the Director, EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by TCEQ of each commitment.
- D. Within 90 days of receipt, EPA will review and provide feedback about any documentation submitted by TCEQ demonstrating completion of each commitment (e.g., evidence of publication of the designation of the Non-discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.

#### V. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Electronic documents submitted by TCEQ to EPA via email shall be sent to the following email address: [ HYPERLINK "mailto:ocr@epa.gov" ]. Documents submitted by TCEQ to EPA shall be sent to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to TCEQ shall be sent to the ~~Executive Director Office~~ of Chief Clerk, Texas Commission on Environmental Quality, Mail Code 1059, P.O. Box 13087, Austin, TX 78711-3087.

#### VI. EFFECT OF THE AGREEMENT

[ PAGE \\* MERGEFORMAT ]

~~A. TCEQ understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, TCEQ understands that during the monitoring of this Agreement, if necessary, EPA may visit TCEQ, interview staff, and request such additional reports or data as are necessary for EPA to determine whether TCEQ has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7, which were at issue in this case.~~

~~A.~~

B. TCEQ understands that EPA will not close its monitoring of this Agreement until EPA determines that TCEQ has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-opening an investigation.

C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to TCEQ's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Director of TCEQ and the Director of OCR.

D. This Agreement constitutes the entire Agreement between TCEQ and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by TCEQ and EPA in accordance with the provisions of Section VI. Paragraph c above.

E. This Agreement does not affect TCEQ's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 CFR Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Executive Director, in his capacity as an official of TCEQ, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of OCR has the authority to enter into this Agreement.

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On behalf of the Texas Commission on Environmental Quality,

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DRAFT

DELIBERATIVE/PRIVILEGED

02/22/17

| Richard Hyde, Executive Director[Name & Title]

(Date)

On behalf of the U.S. Environmental Protection Agency,

Lilian S. Dorka, Acting Director  
Office of Civil Rights

(Date)

DRAFT

[ PAGE \\* MERGEFORMAT ]

Message

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**From:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**Sent:** 1/6/2016 12:59:16 AM  
**To:** Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]  
**CC:** O'Lone, Mary [o'lonemary@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Amy Browning [amy.browning@tceq.texas.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; McDonald, James [McDonald.James@epa.gov]  
**Subject:** Re: Following up on our meeting in Austin - Corpus Christi

Yay, thanks for the good news!

On Jan 5, 2016, at 5:25 PM, Golightly-Howell, Velveta <Golightly-Howell.Velveta@epa.gov> wrote:

Hi Carolyn. Thank you for checking in on this matter. Yes, OCR has received the withdrawal letter. We anticipate releasing the case closure letter soon and certainly before the end of this month.

Velveta

Sent from my iPhone

On Jan 5, 2016, at 12:45 PM, Caroline Sweeney <caroline.sweeney@tceq.texas.gov> wrote:

Hi there,

I wanted to check in to see if we've received the withdrawal letter from Dr. Carman?

Thanks-Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087  
Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

---

**From:** Golightly-Howell, Velveta [mailto:Golightly-Howell.Velveta@epa.gov]  
**Sent:** Tuesday, November 24, 2015 6:07 PM  
**To:** Caroline Sweeney <caroline.sweeney@tceq.texas.gov>  
**Cc:** O'Lone, Mary <o'lonemary@epa.gov>; Coleman, Sam <Coleman.Sam@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Seager, Cheryl <Seager.Cheryl@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>  
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<[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)> wrote:

Thanks so much – I appreciate it. We'll review and compare it to our procedures. On another note, have we received the expected withdrawal letter on the Corpus Christi complaint? Hope y'all have a wonderful Thanksgiving as well!

Regards,  
Caroline

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Texas 78711-3087  
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**From:** O'Lone, Mary [<mailto:o'lonemary@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 6:46 AM  
**To:** Caroline Sweeney  
**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl  
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We plan to send more information shortly, but for now I have attached EPA's 2004 LEP guidance and the Title VI implementing regulations. The pertinent sections of the regulations are found in Subpart D.

Hope you have a nice Thanksgiving and I will be in touch after the holiday.

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US EPA  
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(202) 564-4992

Message

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**From:** Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]  
**Sent:** 1/5/2016 11:25:00 PM  
**To:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** O'Lone, Mary [o'lonemary@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Amy Browning [amy.browning@tceq.texas.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; McDonald, James [McDonald.James@epa.gov]  
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Mary O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel  
US EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
(202) 564-4992

Message

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**From:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**Sent:** 1/5/2016 7:44:56 PM  
**To:** Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]  
**CC:** O'Lone, Mary [o'lonemary@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Amy Browning [amy.browning@tceq.texas.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]  
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**Sent:** Tuesday, November 24, 2015 6:46 AM



**To:** Caroline Sweeney

**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl

**Subject:** Following up on our meeting in Austin

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Mary O'Lone

Civil Rights and Finance Law Office

Office of General Counsel

US EPA

1200 Pennsylvania Ave., NW

Washington, DC 20460

(202) 564-4992

Message

---

**From:** Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]  
**Sent:** 12/2/2015 9:08:01 PM  
**To:** O'Lone, Mary [o'lonemary@epa.gov]; Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** Coleman, Sam [Coleman.Sam@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** RE: Following up on our meeting in Austin

Thanks for forwarding the material, Mary. Carolyn, please don't hesitate to contact Kurt with any questions. Enjoy your evening everyone!

Velveta

Velveta Golightly-Howell  
Director, Office of Civil Rights  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1201A  
Washington, DC 20460  
202-564-6685

---

**From:** O'Lone, Mary  
**Sent:** Wednesday, December 02, 2015 4:00 PM  
**To:** Caroline Sweeney  
**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl; Temple, Kurt  
**Subject:** RE: Following up on our meeting in Austin

Caroline-

Attached you will find both a word and PDF version of technical assistance materials that OCR has prepared.

If you have any questions, please feel free to call me or Kurt Temple, Velveta's Senior Advisor in the Office of Civil Rights, at 202-564-7299.

I have also cc'd Kurt on this email so that you have his email address.  
Thanks, Mary

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US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

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**From:** Caroline Sweeney [mailto:caroline.sweeney@tceq.texas.gov]  
**Sent:** Tuesday, November 24, 2015 10:13 AM  
**To:** O'Lone, Mary

**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl

**Subject:** RE: Following up on our meeting in Austin

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**Sent:** Tuesday, November 24, 2015 6:46 AM

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**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl

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Message

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**From:** O'Lone, Mary [o'lonemary@epa.gov]  
**Sent:** 12/2/2015 9:00:04 PM  
**To:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** RE: Following up on our meeting in Austin  
**Attachments:** Technical Assistance - Federal Nondiscrimination Admin Requirements.pdf; Technical Assistance - Federal Nondiscrimination Admin Requirements.docx

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## **Federal Non-Discrimination Laws Administrative Requirements<sup>1</sup>**

Federal regulations (40 C.F.R. Part 7, Subpart D) contain important fundamental elements that are legally required of your civil rights program. These **legal requirements** include:

- Designating at least one person to coordinate efforts to comply with federal civil rights laws under 40 C.F.R. § 7.85(g) if the applicant or recipient employs at least fifteen employees;
- Adopting grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90 if the applicant or recipient employs at least fifteen employees;
- Providing initial and continuing notice of non-discrimination under 40 C.F.R. § 7.95;
- Collecting, maintaining, and providing to OCR and the public, upon request, compliance information (40 C.F.R. § 7.85(a), (f)(1) - (2)), such as
  1. a brief description of any lawsuits pending against you that allege discrimination;
  2. racial/ethnic, national origin, sex and disability data;
  3. a log of discrimination complaints;
  4. reports of any compliance reviews conducted by any other agencies;
- Self-evaluating administrative policies and practices within your program to

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<sup>1</sup> Please note that the purpose of this document is to assist a recipient in complying with federal nondiscrimination laws and is limited to the administrative requirements set forth in the federal nondiscrimination regulations identified in the document. To that end, this document is not intended to comprehensively address every scenario that may arise under federal nondiscrimination laws. Also, if a recipient implements and adheres to the requirements described in this document, that fact alone is no guarantee that the recipient will not receive a civil rights complaint or that the recipient is necessarily compliant with federal non-discrimination laws in any particular complaint or scenario where the recipient's compliance with those laws is at issue.

This document is not intended, nor can it be relied upon, to create any rights or obligations enforceable in any litigation with the United States. In addition, this document does not change in any way, a recipient's obligation to comply with applicable environmental laws.

consider whether such policies and practices involve disability discrimination (40 C.F.R. 7.85(c); and

- Prohibiting intimidation and retaliation under 40 C.F.R. § 7.100.

Below are the factors that OCR will consider in evaluating a recipient's compliance with the non-discrimination requirements above:

### **Non-Discrimination Coordinator**

1. Designate at least one Non-Discrimination Coordinator to ensure compliance with:
  - Title VI of the Civil Rights Act of 1964
  - Section 504 of the Rehabilitation Act of 1973
  - Age Discrimination Act of 1975
  - Section 13 of Federal Water Pollution Control Act of 1972
  - Title IX of the Education Amendments of 1972

(Collectively referred to as the ***federal non-discrimination laws***).
2. Publish in print and online, and continue to do so on an annual basis, the title of the Non-Discrimination Coordinator, email address, telephone contact information, and duties of the Non-Discrimination Coordinator.
3. Ensure that the Non-Discrimination Coordinator's responsibilities include the following:
  - a. Provide information to individuals regarding their right to services, aids, benefits, and participation in any recipient program or activity without regard to race, color, national origin, sex, disability, age or prior opposition to discrimination, as well as notice of recipient's formal and informal grievance processes and the ability to file a discrimination complaint with recipient.
  - b. Establish grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with recipient under federal non-discrimination statutes are processed promptly and appropriately. One element of any policy and procedure should include providing meaningful access for limited-English proficient individuals<sup>2</sup> and individuals with disabilities to recipient's programs and activities.

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<sup>2</sup> See EPA's Limited English Proficiency (LEP) guidance, 69 Fed. Reg.35602 (June 25, 2004), at <http://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf>.

- c. Ensure the tracking of all discrimination complaints filed with the recipient under federal non-discrimination laws including any patterns or systemic problems.
  - d. Conduct a semiannual review of all formal and informal discrimination complaints filed with the recipient's Non-Discrimination Coordinator under federal non-discrimination laws and/or any other complaints independently investigated by the recipient in order to identify and address any patterns or systemic problems.
  - e. Inform and advise recipient's staff regarding the recipient's obligations to comply with federal non-discrimination laws and serve as a resource on such issues.
  - f. Ensure that complainants are updated on the progress of their discrimination complaints filed with recipient under federal non-discrimination laws and are promptly informed as to any determinations made.
  - g. Periodically assess the efficacy of recipient's efforts to maintain compliance with federal non-discrimination laws.
  - h. Ensure appropriate training in Alternative Dispute Resolution for persons involved in informal resolution of discrimination complaints filed under federal non-discrimination laws.
  - i. Provide or procure appropriate services to ensure recipient's employees are appropriately trained on recipient's non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.
4. Ensure that the Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (e.g., serving as the Non-Discrimination Coordinator as well as recipient's legal advisor or representative on civil rights issues).

#### **Notice of Non-Discrimination**

- 1. Recipient will post a notice of non-discrimination on recipient's website and in general publications that are distributed to the public. In order to ensure effective communication with the public, recipient will ensure that its notice of non-discrimination is accessible to limited-English proficient individuals and individuals with disabilities.
- 2. The notice will contain, at a minimum, the following statements:
  - a. Recipient does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.
  - b. Recipient is responsible for coordination of compliance efforts and receipt



of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

- c. If you have any questions about this notice or any of recipient's non-discrimination programs, policies or procedures, you may contact:
  - 1. [Insert name and title of Non-Discrimination Coordinator]
  - 2. [Recipient Name]
  - 3. Address Line 1
  - 4. Address Line 2
  - 5. Address Line 3
  - 6. Phone number
  - 7. Email Address
- d. If you believe that you have been discriminated against with respect to a recipient program or activity, you may contact the [insert title of Non-Discrimination Coordinator] identified above or visit our website at [insert] to learn how and where to file a complaint of discrimination.

### **Grievance Procedures**

- 1. Recipient will ensure that it has published in print and online its grievance procedures to process discrimination complaints filed under federal non-discrimination laws, and will continue to do so on an annual basis, to allow for prompt and appropriate handling of those discrimination complaints.
- 2. The grievance procedures will at a minimum address the following:
  - a. Identify who may file a complaint under the procedures;
  - b. Explain which informal process(es) are available, the options for complainants to bypass an informal process for a formal process at any point;
  - c. That an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination laws will be conducted;
  - d. That the preponderance of the evidence standards will be applied during the analysis of the complaint;
  - e. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs;

- f. That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process;<sup>3</sup> and
- g. That individuals who believe they have been discriminated against because of race, color, national origin, sex, disability, sex, or age, may also file a complaint with EPA OCR. Complaints must be filed within 180 days from the date of the alleged discriminatory act. OCR may waive the 180-day deadline based on a showing of "good cause." See <http://www2.epa.gov/ocr/external-compliance-and-complaints-program-title-vi##complaint>.

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<sup>3</sup> Whether OCR considers complaint investigations and resolutions to be "prompt" will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.

## **Federal Non-Discrimination Laws Administrative Requirements<sup>1</sup>**

Federal regulations (40 C.F.R. Part 7, Subpart D) contain important fundamental elements that are legally required of your civil rights program. These **legal requirements** include:

- Designating at least one person to coordinate efforts to comply with federal civil rights laws under 40 C.F.R. § 7.85(g) if the applicant or recipient employs at least fifteen employees;
- Adopting grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90 if the applicant or recipient employs at least fifteen employees;
- Providing initial and continuing notice of non-discrimination under 40 C.F.R. § 7.95;
- Collecting, maintaining, and providing to OCR and the public, upon request, compliance information (40 C.F.R. § 7.85(a), (f)(1) - (2)), such as
  1. a brief description of any lawsuits pending against you that allege discrimination;
  2. racial/ethnic, national origin, sex and disability data;
  3. a log of discrimination complaints;
  4. reports of any compliance reviews conducted by any other agencies;
- Self-evaluating administrative policies and practices within your program to

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<sup>1</sup> Please note that the purpose of this document is to assist a recipient in complying with federal nondiscrimination laws and is limited to the administrative requirements set forth in the federal nondiscrimination regulations identified in the document. To that end, this document is not intended to comprehensively address every scenario that may arise under federal nondiscrimination laws. Also, if a recipient implements and adheres to the requirements described in this document, that fact alone is no guarantee that the recipient will not receive a civil rights complaint or that the recipient is necessarily compliant with federal non-discrimination laws in any particular complaint or scenario where the recipient's compliance with those laws is at issue.

This document is not intended, nor can it be relied upon, to create any rights or obligations enforceable in any litigation with the United States. In addition, this document does not change in any way, a recipient's obligation to comply with applicable environmental laws.

consider whether such policies and practices involve disability discrimination (40 C.F.R. 7.85(c); and

- Prohibiting intimidation and retaliation under 40 C.F.R. § 7.100.

Below are the factors that OCR will consider in evaluating a recipient's compliance with the non-discrimination requirements above:

### **Non-Discrimination Coordinator**

1. Designate at least one Non-Discrimination Coordinator to ensure compliance with:
  - Title VI of the Civil Rights Act of 1964
  - Section 504 of the Rehabilitation Act of 1973
  - Age Discrimination Act of 1975
  - Section 13 of Federal Water Pollution Control Act of 1972
  - Title IX of the Education Amendments of 1972

(Collectively referred to as the **federal non-discrimination laws**).
2. Publish in print and online, and continue to do so on an annual basis, the title of the Non-Discrimination Coordinator, email address, telephone contact information, and duties of the Non-Discrimination Coordinator.
3. Ensure that the Non-Discrimination Coordinator's responsibilities include the following:
  - a. Provide information to individuals regarding their right to services, aids, benefits, and participation in any recipient program or activity without regard to race, color, national origin, sex, disability, age or prior opposition to discrimination, as well as notice of recipient's formal and informal grievance processes and the ability to file a discrimination complaint with recipient.
  - b. Establish grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with recipient under federal non-discrimination statutes are processed promptly and appropriately. One element of any policy and procedure should include providing meaningful access for limited-English proficient individuals<sup>2</sup> and individuals with disabilities to recipient's programs and activities.

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<sup>2</sup> See EPA's Limited English Proficiency (LEP) guidance, 69 Fed. Reg.35602 (June 25, 2004), at [ HYPERLINK "<http://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf>" ].

- c. Ensure the tracking of all discrimination complaints filed with the recipient under federal non-discrimination laws including any patterns or systemic problems.
  - d. Conduct a semiannual review of all formal and informal discrimination complaints filed with the recipient's Non-Discrimination Coordinator under federal non-discrimination laws and/or any other complaints independently investigated by the recipient in order to identify and address any patterns or systemic problems.
  - e. Inform and advise recipient's staff regarding the recipient's obligations to comply with federal non-discrimination laws and serve as a resource on such issues.
  - f. Ensure that complainants are updated on the progress of their discrimination complaints filed with recipient under federal non-discrimination laws and are promptly informed as to any determinations made.
  - g. Periodically assess the efficacy of recipient's efforts to maintain compliance with federal non-discrimination laws.
  - h. Ensure appropriate training in Alternative Dispute Resolution for persons involved in informal resolution of discrimination complaints filed under federal non-discrimination laws.
  - i. Provide or procure appropriate services to ensure recipient's employees are appropriately trained on recipient's non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.
4. Ensure that the Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (e.g., serving as the Non-Discrimination Coordinator as well as recipient's legal advisor or representative on civil rights issues).

#### **Notice of Non-Discrimination**

1. Recipient will post a notice of non-discrimination on recipient's website and in general publications that are distributed to the public. In order to ensure effective communication with the public, recipient will ensure that its notice of non-discrimination is accessible to limited-English proficient individuals and individuals with disabilities.
2. The notice will contain, at a minimum, the following statements:
  - a. Recipient does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.
  - b. Recipient is responsible for coordination of compliance efforts and receipt

of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

- c. If you have any questions about this notice or any of recipient's non-discrimination programs, policies or procedures, you may contact:
  - 1. [Insert name and title of Non-Discrimination Coordinator]
  - 2. [Recipient Name]
  - 3. Address Line 1
  - 4. Address Line 2
  - 5. Address Line 3
  - 6. Phone number
  - 7. Email Address
- d. If you believe that you have been discriminated against with respect to a recipient program or activity, you may contact the [insert title of Non-Discrimination Coordinator] identified above or visit our website at [insert] to learn how and where to file a complaint of discrimination.

### **Grievance Procedures**

- 1. Recipient will ensure that it has published in print and online its grievance procedures to process discrimination complaints filed under federal non-discrimination laws, and will continue to do so on an annual basis, to allow for prompt and appropriate handling of those discrimination complaints.
- 2. The grievance procedures will at a minimum address the following:
  - a. Identify who may file a complaint under the procedures;
  - b. Explain which informal process(es) are available, the options for complainants to bypass an informal process for a formal process at any point;
  - c. That an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination laws will be conducted;
  - d. That the preponderance of the evidence standards will be applied during the analysis of the complaint;
  - e. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs;

- f. That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process;<sup>3</sup> and
- g. That individuals who believe they have been discriminated against because of race, color, national origin, sex, disability, sex, or age, may also file a complaint with EPA OCR. Complaints must be filed within 180 days from the date of the alleged discriminatory act. OCR may waive the 180-day deadline based on a showing of "good cause." See [ HYPERLINK "<http://www2.epa.gov/ocr/external-compliance-and-complaints-program-title-vi>" ].

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<sup>3</sup> Whether OCR considers complaint investigations and resolutions to be "prompt" will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.

Message

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**From:** Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]  
**Sent:** 11/25/2015 12:06:42 AM  
**To:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** O'Lone, Mary [o'lonemary@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]  
**Subject:** Re: Following up on our meeting in Austin

Hi Caroline. I followed up with Dr. Carman today and he said he'll provide the withdrawal letter ASAP. While apologizing for the delay, he explained that he has had many demands on his plate and been ill. Enjoy your Thanksgiving everyone!

Velveta

Sent from my iPhone

On Nov 24, 2015, at 10:13 AM, Caroline Sweeney <[caroline.sweeney@tceq.texas.gov](mailto:caroline.sweeney@tceq.texas.gov)> wrote:

Thanks so much — I appreciate it. We'll review and compare it to our procedures. On another note, have we received the expected withdrawal letter on the Corpus Christi complaint? Hope y'all have a wonderful Thanksgiving as well!

Regards,  
Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087  
Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

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**From:** O'Lone, Mary [<mailto:o'lonemary@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 6:46 AM  
**To:** Caroline Sweeney  
**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl  
**Subject:** Following up on our meeting in Austin

Caroline-

I am following up on Velveta's offer of guidance on implementing the nondiscrimination procedural safeguards.

We plan to send more information shortly, but for now I have attached EPA's 2004 LEP guidance and the Title VI implementing regulations. The pertinent sections of the regulations are found in Subpart D.

Hope you have a nice Thanksgiving and I will be in touch after the holiday.  
Mary

Mary O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel  
US EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
(202) 564-4992



Message

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**From:** Coleman, Sam [Coleman.Sam@epa.gov]  
**Sent:** 8/25/2016 9:37:13 PM  
**To:** bridget.bohac@tceq.texas.gov; Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** Rhodes, Julia [Rhodes.Julia@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Bachle, Laura [Bachle.Laura@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]; Keeler, Katsumi [Keeler.Katsumi@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Stenger, Wren [stenger.wren@epa.gov]; Robinson, Jeffrey [Robinson.Jeffrey@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]  
**Subject:** FW: INFORMAL RESOLUTION AGREEMENT BEAUMONT OCR Complaint No. 01R-00-R6  
**Attachments:** Procedural Safeguard checklist docx 8-1-16.docx; FINAL Draft Informal Resolution Agreement Beaumont 8-19-16.docx

Corrected email

Samuel Coleman, P.E.  
Deputy Regional Administrator  
EPA Region 6  
[coleman.sam@epa.gov](mailto:coleman.sam@epa.gov)  
214.665.2100 Ofc  
214.665.3110 Direct

**Personal Privacy / Ex. 6**

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**From:** Coleman, Sam  
**Sent:** Thursday, August 25, 2016 12:27 PM  
**To:** Richard Hyde (richard.hyde@tceq.texas.gov) <richard.hyde@tceq.texas.gov>; 'bohac.bridget@tceq.texas.gov' <bohac.bridget@tceq.texas.gov>; 'sweeney.caroline@tceq.texas.gov' <sweeney.caroline@tceq.texas.gov>  
**Cc:** Rhodes, Julia <Rhodes.Julia@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Bachle, Laura <Bachle.Laura@epa.gov>; O'Lone, Mary <olone.mary@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Seager, Cheryl <Seager.Cheryl@epa.gov>; Stenger, Wren <stenger.wren@epa.gov>; Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>  
**Subject:** INFORMAL RESOLUTION AGREEMENT BEAUMONT OCR Complaint No. 01R-00-R6

I am writing on behalf of EPA Office of Civil Rights (Lilian Dorka) and Region 6. Ms Dorka sends her regards and appreciation for the discussion and work on this issue up to now. Attached is the Draft Resolution Agreement for the Beaumont Title VI case - OCR Complaint No. 01R-00-R6. Over the course of the last year, we had several conversations about the informal resolution approach to pending cases. We are sharing this Informal Resolution Agreement, along with a "checklist" of procedural and access requirements, for their review. EPA (Region 6 and OCR) emphasizes informal resolution as much as possible in order to fully resolve pending complaints. I invite you to take a look at OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at: [http://www.epa.gov/sites/production/files/2015-12/documents/ocr\\_crm\\_final.pdf](http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf).)

We (OCR and Region 6) would like to set a time to speak with TCEQ (proposing the week of September 12th ) so that we can:

1. Go over all aspects of OCR's informal complaint resolution process and provide an opportunity for any questions they may have about the process, and
2. Go over the proposed Informal Resolution Agreement itself as well as the Checklist which focuses on civil rights procedural requirements. This can include any input from TCEQ that adds/clarify any facts about the case (Note that we have been speaking to all recipients about the procedural requirements as we resolve our pending cases.)

I am hopeful and optimistic about the opportunity to discuss informal resolution of the complaint. Please let me know if you need additional/different info. Thanks for your help!

Samuel Coleman, P.E.  
Deputy Regional Administrator  
EPA Region 6  
[coleman.sam@epa.gov](mailto:coleman.sam@epa.gov)  
214.665.2100 Ofc  
214.665.3110 Direct

**Personal Privacy / Ex. 6**

## CHECK LIST FOR PROCEDURAL SAFEGUARDS FOR RECIPIENTS FEDERAL NON-DISCRIMINATION OBLIGATIONS

*Federal Non-Discrimination Statutes: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972.<sup>1</sup>*

Item	Yes & Supporting Documentation	Not Yet	Checking
<b>Notice of Non-Discrimination under the Federal Non-Discrimination Statutes<sup>2</sup></b>			
See attachment for recommended text of notice			
The non-discrimination notice is posted:			
• in a prominent location in your offices and facilities			
• prominently on your website			
• in any publications			
<b>Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes<sup>3</sup></b>			
A grievance procedure that:			
• Clearly identifies the Non-Discrimination Coordinator, including contact information			
• Explains the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the grievance procedures			
• States who may file a complaint under the procedures			
• Describes which formal and informal processes are available, and the options for complainants in pursuing either			
• Explains that an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted			

<sup>1</sup> 40 C.F.R. § 7.85(g)

<sup>2</sup> 40 C.F.R. § 7.95(a).

<sup>3</sup> 40 C.F.R. § 7.90.

Item	Yes & Supporting Documentation	Not Yet	Checking
<ul style="list-style-type: none"> <li>States that the preponderance of the evidence standards will be applied during the analysis of the complaint</li> </ul>			
<ul style="list-style-type: none"> <li>Contains assurances that retaliation is prohibited<sup>4</sup> and that claims of retaliation will be handled promptly if it occurs</li> </ul>			
<ul style="list-style-type: none"> <li>States that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process<sup>5</sup></li> </ul>			
<ul style="list-style-type: none"> <li>Is published in print in general publications distributed to the public</li> </ul>			
<b>Non-Discrimination Coordinator<sup>6</sup></b>			
At least one Non-Discrimination Coordinator to ensure compliance with the federal non-discrimination statutes			
Non-Discrimination Coordinator or other individual responsible for:			
<ul style="list-style-type: none"> <li>Providing information internally and externally regarding rights to services, aids, benefits, and participation without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination</li> </ul>			
<ul style="list-style-type: none"> <li>Providing notice of your Agency's formal and informal grievance processes and the ability to file a discrimination complaint</li> </ul>			
<ul style="list-style-type: none"> <li>Establishing grievance policies and procedures or mechanisms (e.g., an investigation manual)</li> </ul>			
<ul style="list-style-type: none"> <li>Tracking all complaints filed with your Agency under federal non-discrimination statutes including any patterns or systemic problems</li> </ul>			
<ul style="list-style-type: none"> <li>Semiannual reviews of all complaints filed with your Agency under federal non-discrimination statutes in order to identify and address any patterns or systemic problems</li> </ul>			

<sup>4</sup> 40 C.F.R. § 7.100.

<sup>5</sup> Whether OCR considers complaint investigations and resolutions to be "prompt" will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.

<sup>6</sup> 40 C.F.R. § 7.85(g).

Item	Yes & Supporting Documentation	Not Yet	Checking
<ul style="list-style-type: none"> <li>Appropriate training for your Agency's employees on your Agency's non-discrimination policies and procedures and obligations to comply with federal non-discrimination statutes</li> </ul>			
<ul style="list-style-type: none"> <li>Updating complainants on the progress of their complaints filed with your Agency under federal non-discrimination statutes and any determinations made</li> </ul>			
<ul style="list-style-type: none"> <li>Periodic evaluations of the efficacy of your Agency's efforts to provide services, aids, benefits, and participation in any of your Agency's programs or activities without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination</li> </ul>			
<b>Public Participation</b>			
Written and published public participation process/procedures that provide that when your Agency prepares a public participation plan for a specific action, it will include:			
<ul style="list-style-type: none"> <li>A description of the community (including demographics, history, and background)</li> </ul>			
<ul style="list-style-type: none"> <li>A contact list of Agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet</li> </ul>			
<ul style="list-style-type: none"> <li>A list of past and present community concerns (including any complaints filed under the federal non-discrimination statutes)</li> </ul>			
<ul style="list-style-type: none"> <li>A detailed plan of action (outreach activities) your Agency will take to address concerns</li> </ul>			
<ul style="list-style-type: none"> <li>A contingency plan for unexpected events</li> </ul>			
<ul style="list-style-type: none"> <li>Location(s) where public meetings will be held (consider the availability and schedules of public transportation)</li> </ul>			
<ul style="list-style-type: none"> <li>Contact names for obtaining language assistance services for limited-English proficient persons, including, translation of documents and/or interpreters for meetings</li> </ul>			

Item	Yes & Supporting Documentation	Not Yet	Checking
<ul style="list-style-type: none"> <li>Appropriate local media contacts (based on the culture and linguistic needs of the community)</li> </ul>			
<ul style="list-style-type: none"> <li>Location of the information repository</li> </ul>			
<b>Access To Programs And Activities by Persons with Limited English Proficiency</b>			
Has your Agency conducted an appropriate analysis described in OCR's LEP Guidance found at 69 FR 35602 (June 25, 2004) and <a href="http://www.lep.gov">http://www.lep.gov</a> to determine what language services it may need to provide to ensure that individuals with limited-English proficiency can meaningfully participate in the process?			
Has your Agency developed a language access plan consistent with the details found in OCR's training module for LEP. <a href="http://www.epa.gov/civilrights/lepaccess.htm">http://www.epa.gov/civilrights/lepaccess.htm</a> ?			
Does your Agency have written and published procedures that:			
<ul style="list-style-type: none"> <li>Ensure meaningful access to all of your Agency's programs and activities to persons with limited-English proficiency and individuals with disabilities</li> </ul>			
<ul style="list-style-type: none"> <li>Make communities you serve aware that foreign language services are available</li> </ul>			
<ul style="list-style-type: none"> <li>Translate standardized documents</li> </ul>			
<ul style="list-style-type: none"> <li>Provide for simultaneous oral interpretation of live proceedings such as town hall meetings or public hearings</li> </ul>			
<b>Access To Programs And Activities by Persons with Disabilities</b>			
Does your Agency have written and published procedures to ensure to provide access to your programs, services, and activities for individuals with disabilities that:			
<ul style="list-style-type: none"> <li>Provides at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services provided by your</li> </ul>			

Item	Yes & Supporting Documentation	Not Yet	Checking
Agency in a timely manner and in such a way as to protect the privacy and independence of the individual			
<ul style="list-style-type: none"> <li>Ensures that your Agency's facilities and non-Agency facilities utilized by your Agency (<i>e.g.</i>, if your Agency holds a public hearing at a school) are physically accessible for individuals with disabilities</li> </ul>			
<ul style="list-style-type: none"> <li>Makes communities you serve aware that services for individuals with disabilities are available</li> </ul>			

**ATTACHMENT – NOTICE OF NON-DISCRIMINATION RECOMMENDED TEXT**

[Agency Name] does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.

[Insert name and title of Non-Discrimination Coordinator] is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

If you have any questions about this notice or any of [Agency Name]'s non-discrimination programs, policies or procedures, you may contact:

[Insert name and title of Non-Discrimination Coordinator]

[Insert Agency Name and Address]

[Insert phone number of Non-Discrimination Coordinator]

[Insert email address of Non-Discrimination Coordinator]

If you believe that you have been discriminated against with respect to a [Agency Name] program or activity, you may contact the [insert title of Non-Discrimination Coordinator] identified above or visit our website at [insert] to learn how and where to file a complaint of discrimination.



**INFORMAL RESOLUTION AGREEMENT**  
**between the**  
**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
**and the**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**OCR Complaint No. 01R-00-R6**

**I. PURPOSE AND JURISDICTION**

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulations at 40 C.F.R. Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Texas Commission on Environmental Quality (TCEQ, formerly the Texas Natural Resource Conservation Commission) is a recipient of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.
- B. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, brought under Title VI and EPA's regulations at 40 C.F.R. Part 7, that alleged discrimination based on race in violation of Title VI. In response to the complaint, EPA began an investigation of TCEQ's compliance with Title VI and EPA regulations. During the course of EPA's investigation, TCEQ agreed to enter into an informal resolution agreement in order to resolve this complaint.
- C. This Informal Resolution Agreement is entered into by the Texas Commission on Environmental Quality and the EPA's Office of Civil Rights (OCR).
- D. This Informal Resolution Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulations found at 40 C.F.R. Part 7, resolves complaint No. 01R-00-R6 and additional concerns identified by EPA. It is understood that this Informal Resolution Agreement does not constitute an admission by TCEQ of a violation of, or a finding of compliance or noncompliance by EPA with, 40 C.F.R. Part 7.
- E. TCEQ is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulations at 40 C.F.R. Part 7. The activities detailed in Section III of this Agreement, which TCEQ has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

**II. BACKGROUND**

- A. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, that alleged discrimination based on race in violation of Title VI and EPA regulations at 40 C.F.R.

Part 7 relating to the 1999 issuance of a modification of a Clean Air Act (CAA) Permit for a hydrocracker unit at the ExxonMobil refinery in Beaumont, Texas.

- B. In response to the complaint described in Section I, Paragraph B, EPA initiated an investigation of TCEQ's compliance with Title VI and EPA regulations at 40 C.F.R. Part 7. The investigation addressed allegations that TCEQ discriminated on the basis of race by allowing ExxonMobil to use inappropriate decreases in its netting calculations for the modification, thereby avoiding a permit hearing, and thus disproportionately denying African Americans the opportunity to participate in the permit process; and issuing a permit modification that resulted in a disparate distribution of the adverse health impacts from the increased air pollution emissions, specifically VOCs, SO<sub>2</sub>, PM<sub>10</sub>, NO<sub>x</sub>, and H<sub>2</sub>S.
- C. EPA acknowledges that since the initiation of this investigation, TCEQ has made changes to public notice requirements which have increased the opportunity for public engagement in the permitting process. Additionally, TCEQ currently requires permit application information and supporting data for netting calculations that was not required in permit applications at the time of the Exxon Mobil Beaumont modification. TCEQ now requires the relevant information necessary to determine whether the appropriate netting exercises were conducted.
- D. EPA acknowledges since the initial Title VI complaint was filed, a significant reduction in NO<sub>x</sub>, SO<sub>2</sub>, and VOC emissions has occurred at the facility, based on company reported emission inventories. These emissions reductions are due in large part to EPA's National Petroleum Refinery Initiative which began in 2000 and resulted in a National Settlement (Consent Decree) with ExxonMobil in December 2005. The Consent Decree required the Beaumont refinery to operate a Wet Gas Scrubber and Thermal DeNO<sub>x</sub> system on the Fluidized Catalytic Cracking Unit (FCCU) to control sulfur dioxide, particulates, and nitrogen oxides. The Consent Decree included provisions that reduced nitrogen oxide emissions from selected larger Heaters and Boilers and enhancement to the existing Flare Gas Recovery System to minimize routine flaring. However, EPA remains concerned with emissions of PM and H<sub>2</sub>S, which have fluctuated significantly from year-to-year and, in the case of H<sub>2</sub>S, is an ongoing concern in the community.
- E. Also, since the filing of the Title VI complaint, EPA has updated the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for the petroleum refinery sector several times requiring maximum achievable control technology for hazardous air pollutants (HAP) emissions, and more recently the petroleum refinery sector risk and technology review updated the NESHAP rules to require continuous monitoring of benzene concentrations at the fence line to ensure that refineries appropriately manage HAP emissions from fugitive emission sources such as leaking equipment and wastewater treatment operations. This requirement applies to the ExxonMobil Beaumont refinery and other refineries in Texas.

- F. Further, since the time of the Title VI complaint, the refinery has also received a Plantwide Applicability Limit (PAL) permit for NOx and VOCs based on its historical baseline actual emissions which were lower than their permitted historical allowable emissions.
- G. During the course of the investigation, OCR reviewed the requirements of 40 C.F.R. Part 7, Subpart D that are foundational elements of a recipient's non-discrimination program. These include: the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g); adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and, continuing notice of non-discrimination under 40 C.F.R. § 7.95. OCR also reviewed TEQ's public participation process and whether TCEQ ensures that the public participation process is accessible to limited-English proficient persons and persons with disabilities. Finally, OCR reviewed whether, in general, TCEQ has in place procedures, policies, and/or guidance to ensure that it provides meaningful access to limited English proficient persons and persons with disabilities in all its programs, services and activities that receive federal financial assistance from EPA.

### **III. SPECIFIC TCEQ COMMITMENTS**

- A. TCEQ shall ensure that:
  - 1. Within 180 days after the effective date of this Agreement:
    - a. A fence line monitoring system is in operation at the ExxonMobil Beaumont Complex to accurately and continuously monitor and record, at minimum, concentrations of hydrogen sulfide and particulate matter (for the reasons identified in II.D) at the Complex limits in a manner approved by EPA.
    - b. A meteorological system is in operation at the ExxonMobil Beaumont Complex to accurately and continuously detect and record, at a minimum, the wind speed and direction.
  - 2. The real-time and historical data resulting from III(A)(1)(a) and III(A)(1)(b) of this Agreement is made readily available to the general public and also readily accessible to individuals with limited English proficiency and individuals with disabilities.
  - 3. The real-time and historical data resulting from III(A)(1)(a) and III(A)(1)(b) of this Agreement is made readily available to the ExxonMobil facility staff, with adequate auditory and visual alarms.
  - 4. TCEQ audits and validates the data in section III(A)(1) of this Agreement.
- B. Within 180 days after the effective date of this Agreement, TCEQ shall submit to EPA, for EPA's review and approval, a report of TCEQ's current programs and activities, and plans for future programs and activities, to monitor and abate the

effects of air toxics emissions regulated by TCEQ, including hydrogen sulfide, in communities adjacent to the ExxonMobil Beaumont refinery and, for consistency, all other petroleum refineries in TCEQ's jurisdiction.

- C. TCEQ shall verify compliance of the ExxonMobil Beaumont Complex with all requirements of the new residual risk rules resulting from EPA's Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards (Refinery Sector Rule) within 180 days of the due date for implementation of each requirement. Within 180 days of the verification of the implementation of each requirement, TCEQ shall notify EPA of its completion.
- D. TCEQ shall post the reports described in Sections III(A), III(B), and III(C) of this Agreement on its website in such a manner that it is readily accessible to the general public and also accessible to individuals with limited English proficiency and individuals with disabilities.

#### *Non-Discrimination Procedural Safeguards*

(Please see attached "checklist" that EPA would like to discuss with TCEQ to determine the current status of TCEQ's non-discrimination program so that the informal resolution agreement will accurately reflect elements TCEQ has already adopted and those TCEQ commits to implement.)

- E. *Notice of Non-Discrimination under the Federal Non-Discrimination Statutes*
- F. *Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes*
- G. *Designation of a Non-Discrimination Coordinator*
- H. *Public Participation*
  - I. *Access for Persons with Limited English Proficiency*
  - J. *Access for Persons with Disabilities*
  - K. *Training*
    - 1. Within 90 days after implementing the deliverables identified in this Agreement related to non-discrimination procedural safeguards, public participation and equal access, TCEQ will ensure that all appropriate staff has been trained on these processes and procedures as well as on the nature of the federal non-discrimination obligations.
    - 2. Within 90 days after execution of this Agreement, TCEQ shall have a plan in place to ensure that the training in Section III, Paragraph K. 1. above is a routine part of the on-boarding process for new employees and is given routinely as refresher training to all employees.

#### IV. GENERAL

- A. In consideration of TCEQ's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 01R-00-R6 and not issue a decision containing findings on the merits of the complaint.
- B. EPA will, upon request, provide technical assistance to TCEQ regarding any of the civil rights nondiscrimination obligations previously referenced.
- C. TCEQ will report the completion of each commitment identified under Section III consistent with the timeframes in Section III by certified mail to the Director, EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by TCEQ of each commitment.
- D. Within 90 days of receipt, EPA will review and provide feedback about any documentation submitted by TCEQ demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.

#### V. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Electronic documents submitted by TCEQ to EPA via email shall be sent to the following email address: [ HYPERLINK "mailto:ocr@epa.gov" ]. Documents submitted by TCEQ to EPA shall be sent to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to TCEQ shall be sent to the Executive Director, Texas Commission on Environmental Quality, Mail Code 109, P.O. Box 13087, Austin, TX 78711-3087.

#### VI. EFFECT OF THE AGREEMENT

- A. TCEQ understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, TCEQ understands that during the monitoring of this Agreement, if necessary, EPA may visit TCEQ, interview staff, and request such additional reports or data as are necessary for EPA to determine whether TCEQ has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R Part 7, which were at issue in this case.
- B. TCEQ understands that EPA will not close its monitoring of this Agreement until EPA determines that TCEQ has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-opening an investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to TCEQ's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Director of TCEQ and the Director of OCR.
- D. This Agreement constitutes the entire Agreement between TCEQ and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by TCEQ and EPA in accordance with the provisions of Section VI. Paragraph c above.
- E. This Agreement does not affect TCEQ's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 CFR Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Executive Director, in his capacity as an official of TCEQ, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of OCR has the authority to enter into this Agreement.

On behalf of the Texas Commission on Environmental Quality,

| \_\_\_\_\_  
[Name & Title]

\_\_\_\_\_  
(Date)

On behalf of the U.S. Environmental Protection Agency,

\_\_\_\_\_  
Lilian S. Dorka, Acting Director  
Office of Civil Rights

\_\_\_\_\_  
(Date)

DRAFT

Message

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**From:** O'Lone, Mary [o'lonemary@epa.gov]  
**Sent:** 11/24/2015 3:24:19 PM  
**To:** Caroline Sweeney [caroline.sweeney@tceq.texas.gov]  
**CC:** Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]; Coleman, Sam [Coleman.Sam@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]  
**Subject:** Re: Following up on our meeting in Austin

I have not seen anything from Rev. Malveaux or Dr. Carman yet.

We will let you know when it arrives.

Although with holiday leave schedules, there may be lag time in letting you know if it comes in during the next few days.

Mary O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel  
US EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
(202) 564-4992

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**From:** Caroline Sweeney <caroline.sweeney@tceq.texas.gov>  
**Sent:** Tuesday, November 24, 2015 10:13 AM  
**To:** O'Lone, Mary  
**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl  
**Subject:** RE: Following up on our meeting in Austin

Thanks so much — I appreciate it. We'll review and compare it to our procedures. On another note, have we received the expected withdrawal letter on the Corpus Christi complaint? Hope y'all have a wonderful Thanksgiving as well!

Regards,  
Caroline

Caroline M. Sweeney | Deputy Director | TCEQ Office of Legal Services  
12100 Park 35 Circle, Bldg. A, Austin, Texas 78753 | Mail: MC-218, P.O. Box 13087, Austin, Texas 78711-3087  
Phone: 512/239-0665 | Fax: 512/239-0606 | Agency website: <http://www.tceq.texas.gov/>

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**From:** O'Lone, Mary [mailto:o'lonemary@epa.gov]  
**Sent:** Tuesday, November 24, 2015 6:46 AM  
**To:** Caroline Sweeney  
**Cc:** Golightly-Howell, Velveta; Coleman, Sam; Dorka, Lilian; Seager, Cheryl  
**Subject:** Following up on our meeting in Austin

Caroline-

I am following up on Velveta's offer of guidance on implementing the nondiscrimination procedural safeguards.

We plan to send more information shortly, but for now I have attached EPA's 2004 LEP guidance and the Title VI implementing regulations. The pertinent sections of the regulations are found in Subpart D.

Hope you have a nice Thanksgiving and I will be in touch after the holiday.



Mary

Mary O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel  
US EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
(202) 564-4992